NO. 76-673

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

JOSHUA CAZARES, JOYCE CAZARES, KAY L. SULLIVAN, WILLIAM J. PIERCE and GENEVIEVE J. PIERCE,
Appellants

v.

STATE OF INDIANA, GOVERNOR OTIS BOWEN, LIEUTENANT GOVERNOR ROBERT D. ORR, TREASURER JACK L. NEW, AUDITOR MARY AIKENS CURRIE and ALL MEMBERS OF THE INDIANA 99th GENERAL ASSEMBLY
Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS

JURISDICTIONAL STATEMENT

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OF COUNSEL:
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I N D E X

C I T A T I O N S

Cases

Statutes

Constitutions

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

NO. _____

JOSHUA CAZARES, JOYCE CAZARES, KAY L. SULLIVAN, WILLIAM J. PIERCE and GENEVIEVE J. PIERCE,
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v.

STATE OF INDIANA, GOVERNOR OTIS BOWEN, LIEUTENANT GOVERNOR ROBERT D. ORR, TREASURER JACK L. NEW, AUDITOR MARY AIKENS CURRIE and ALL MEMBERS OF THE INDIANA 99th GENERAL ASSEMBLY
Appellees.

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FOR THE SEVENTH CIRCUIT
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JURISDICTIONAL STATEMENT

(A) OFFICIAL AND UNOFFICIAL REPORTS

1. Unpublished Order
United States Court of Appeals
For the Seventh Circuit
Cazares -v- Indiana
No. 76-1224
Dated August 17, 1976

2. Unpublished Entry
United States District Court
Southern District of Indiana
Indianapolis Division
Cazares -v- Indiana
No. IP 76-C-7
Dated February 17, 1976

(B) GROUNDS FOR JURISDICTION
NATURE OF PROCEEDINGS - STATUTES PURSUANT TO WHICH PROCEEDINGS BROUGHT

1. Plaintiffs instituted this class action under the Civil Rights Act of 1964, 42 U.S.C.A. §1981 et. seq., 28 U.S.C.A. §1343 et. seq., challenging the constitutionality of the present structure of the Indiana Court of Appeals, the intermediate appellate court.

DATE OF JUDGMENT - TIME OF ENTRY - NOTICE OF APPEAL

2. (a) Judgment Entered August 17, 1976. Dated August 17, 1976.

(b) Notice of Appeal filed November 15, 1976, United States Court of Appeals - Seventh Circuit.

STATUTORY PROVISIONS CONFERRING JURISDICTION

3. 28 U.S.C.A. §1254(2):

"Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
(2) By appeal by a party relying on a State statute held by a Court of Appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States . . . .

and the review on appeal shall be restricted to the Federal Questions presented."

CASES SUSTAINING JURISDICTION

4. Watson -v- Employers Liability Assurance Corp. La. 1954, 75 S.Ct. 166, 348 U.S. 66.
99 L.Ed. 635 rehearing denied 75 S.Ct. 289, 348 U.S. 921, 99 L.Ed. 722.

Where the Federal Court of Appeals had held a Louisiana statute to be repugnant to the Federal Constitution, the case was properly before the Supreme Court on Appeal.

STATUTES INVOLVED

5. Constitution of the State of Indiana, Article I, Bill of Rights §12.
Burns Indiana Statutes 1, p. 12.

(C) QUESTION PRESENTED

Whether the existence of the Indiana Constitutional Provision requiring justice to be administered speedily and without delay imposes upon the Court a requirement to determine a general rule in consonance with the Fourteenth Amendment with regard to delay in the Indiana Courts of Appeal such as to give rise to a cause of action for damages.

(D) STATEMENT OF THE CASE

This is a class action brought by Plaintiffs-Appellants to compel the Defendants-Appellees to alleviate the backlog of cases in the Second District of

the Indiana Court of Appeals. Representative Plaintiffs are citizens and residents of the United States of America and the State of Indiana and have been Appellants seeking redress for damages and other specific relief from the Indiana Court of Appeals and/or the Indiana Supreme Court. Due to the undue delay in deciding their cases, Plaintiffs-Appellants have been prejudiced and thereby suffered damages.

(E) SUBSTANTIALITY OF THE QUESTION PRESENTED

In the course of their opinion the Court of Appeals stated with regard to the matter of collecting damages for unreasonable delay in the decision of appellate matters that determining a general rule in civil cases is even more difficult because there is no constitutional right, as there is under the Sixth Amendment, to a speedy trial.

By so doing, the Court ignored the Indiana constitutional provision for a speedy trial cited in Appellants' Court of Appeals brief and apparently held it for naught. As a result the people of Indiana are left with a situation in which the meaning of their constitutional provision is obscure in reference to the Fourteenth Amendment to the U. S. Constitution.

This is crucial since a speedy determination of appeals is necessary to preserve a party's right to a new trial. Undue delay in the decision of any appeal subjects an appellant to a circumstance in which a witness necessary to the representation of his case might pass away or at least suffer a lapse of memory.

The problem is further highlighted in Indiana since causes of action for personal injuries do not survive in all instances, see I.C. 34-1-1-1. Thus, the compelling situation is presented whereby a person granted a new trial on a personal injury cause of action is denied his hard earned rights by reason of his appeal due to his death.

Respectfully submitted,

Charles S. Gleason

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Of Counsel
WATSON, GLEASON & HAY

I CERTIFY THAT A COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL OF RECORD.
ATTORNEY

APPENDIX

Unpublished Per Curiam Order
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

August 17, 1976

Hon. TOM C. CLARK, Associate Justice (Retired)*
Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. WALTER J. CUMMINGS, Circuit Judge

JOSHUA CAZARES, JOYCE CAZARES, RAY Z. SULLIVAN, WILLIAM PIERCE and GENEVIEVE PIERCE,
Plaintiffs-Appellants,
No. 76-1224 vs.
STATE OF INDIANA, et al.,
Defendants-Appellees.

) Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division No. IP 76-C-7
William E. Steckler, Judge

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Indianapolis Division and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

---

*Honorable Tom C. Clark, Associate Justice

(Retired) of the Supreme Court of the United States, sitting by designation.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Argued May 28, 1976
August 17, 1976

BEFORE
Hon. THOMAS E. FAIRCHILD, Chief Judge
Hon. TOM C. CLARK, Associate Justice (Retired)*
Hon. WALTER J. CUMMINGS, Circuit Judge

JOSHUA CAZARES, JOYCE CAZARES, et al.,
Plaintiffs-Appellants,
No. 76-1224 vs.
STATE OF INDIANA, et al.
Defendants-Appellees.

) Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division, No. IP 76-C-7
William E. Steckler, Judge.

O R D E R

Plaintiffs instituted this class action under the Civil Rights Act challenging the constitutionality of the present structure of the Indiana Court of Appeals, the intermediate appellate court. That court is divided into three districts. Plaintiffs contend that the district lines are not rationally drawn and consequently the Second District experiences a greater case load and longer delays in rendering decisions than the other two districts. The longer delay, plaintiffs allege, denies them equal protection of the laws.

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*Honorable Tom C. Clark, Associate Justice (Retired) of the Supreme Court of the United States is sitting by designation.

Count I of the complaint sought an injunction declaring unconstitutional the portions of the Indiana Constitution authorizing intermediate appellate courts. 1/ Plaintiffs also sought a mandatory injunction restructuring the state appellate court system. Count II asked for $100 million in actual damages and $50 million in punitive damages. The district court dismissed the suit because it presented a non-justiciable "political question." We agree.

Disputes presented to courts are deemed political when their resolution is textually committed to another branch of the government. Gilligan v. Morgan, 413 U.S. 1, 8; Baker v. Carr, 369 U.S. 186, 217. The theory of this limitation on judicial power is found in the notion that the courts should decide only those questions for which they have some special competence. Consequently, the more general concept of justiciability includes the principle that a court will not entertain a suit where the issues are not capable of resolution by reference to judicially ascertainable standards. Powell v. McCormack, 395 U.S. 486, 517; Baker v. Carr, supra, 369 U.S. at 198. Although no provision of the Federal Constitution specifically bars consideration of plaintiffs' complaint, the questions presented

1/ Plaintiffs also filed a motion to convene a three-judge court. This motion was denied when the district court dismissed the suit.

are best resolved by the state courts and the Indiana legislature. See Ad Hoc Committee on Judicial Administration v. Commonwealth of Massachusetts, 488 F.2d 1241 (1st Cir. 1973).

The Supreme Court's recent decisions in Rizzo v. Goode, ____ U.S. ____, ____, 44 LW 4095, and O'Shea v. Littleton, 414 U.S. 488, teach that as a matter of federalism the federal courts should not assume the task of supervising the internal affairs of state and local governments. Requests by litigants to do so are not justiciable because they involve public policy considerations as to governmental systems. Because Count I asks the federal court to require the restructuring of the state court, it falls within the prohibitions of these cases 2/ and therefore must be dismissed.

Count II must also be dismissed because there are no judicially cognizable standards to determine when delay becomes so unreasonable to give a party a cause of action for damages. In Ad Hoc Committee on Judicial Administration v. Commonwealth of Massachusetts, supra, 488 F.2d at 1244, the court noted that many factors affect the time it takes to render a decision, making it impossible to set forth a general rule for when a violation of rights occurs. Even in criminal cases, whether the delay is too long is a matter to be decided in the particular case. Barker v. Wingo, 407 U.S. 514, 521. Determining a general rule in civil cases is even more

2/ See also De Kosenko v. State Of New York 427 F.2d 351 (2d Cir. 1970).

difficult because there is no constitutional right, as there is under the Sixth Amendment, to a speedy trial. In the absence of some judicially ascertainable standard, it follows that the difference in delays among the cases does not deny plaintiffs the equal protection of the laws.[3]

Affirmed.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOSHUA CAZARES, JOYCE CAZARES KAY L. SULLIVAN, WILLIAM J. PIERCE and GENEVIEVE J. PIERCE,	)	
Plaintiffs,	)	CAUSE NO.
-vs-	)	IP-76-7-C
STATE OF INDIANA, et al,	)	
Defendants.	)	

ENTRY

This matter came on for hearing on January 27, 1976 on defendant's Motion to Dismiss, Plaintiff's Application for Convening of Three Judge Court and Defendant's Motion to Deny Plaintiffs' Request for Three Judge Court, the Plaintiffs appearing by Richard Watson, Charles S. Gleason and David Greene, the Defendants appearing by Theodore L. Sendak, Attorney General of Indiana, by Donald P. Bogard, Assistant

[3]/We need not reach the other grounds for affirmance raised by defendants.

Attorney General and David A. Miller, Deputy Attorney General, and the House of Representatives also appearing by William Wood. After hearing arguments of counsel the Court now finds as follows:

1. The plaintiffs are citizens of the State of Indiana.
2. The defendants are the State of Indiana and various State Officials in their official capacities.
3. The suit attempts to have this Court mandate the Indiana General Assembly to appropriate funds for use for various purposes by the Appellate Courts of Indiana, to reapportion the districts of those Courts, and to redistribute the case load of the Court of Appeals of Indiana.
4. The suit, in addition to requiring the State of Indiana to appropriate funds, also seeks substantial damages from the State of Indiana.
5. None of the Plaintiffs in this cause have a case currently pending before either the Indiana Court of Appeals or the Supreme Court of Indiana.

Based upon the aforementioned findings this Court now concludes as follows:

1. This Court has no jurisdiction over the subject matter in this cause due to the Eleventh Amendment to the Constitution of the United States.
2. The defendants are not "persons" whithin the provisions of 42 U.S.C. §1983, and there-

fore, are not subject to the jurisdiction of this Court.

3. The members of the General Assembly are immune from suit for actions done in their official capacities.
4. This Court lacks jurisdiction of this cause since it is not a justiciable issue, but instead is a political question which is within the province of the Indiana General Assembly.
5. Plaintiffs lack standing to bring this action.
6. The Complaint fails to state a claim upon which relief can be granted.
7. Since there is no jurisdiction in the District Court and the Plaintiffs' claim is plainly unsubstantial, there is no basis for the convention of a Three Judge Court.

ORDER

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss is granted, and that this cause is dismissed with prejudice, costs assessed to Plaintiffs. Defendants' Motion to Deny Plaintiffs' Request for a Three Judge Court is granted.

All of which is ordered this 17th day of February, 1976.

/s/ WILLIAM E. STECKLER
Chief Judge, United States District Court for the Southern District of Indiana, Indianapolis Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOSHUA CAZARES, JOYCE CAZARES, RAY Z. SULLIVAN) WILLIAM PIERCE, and GENEVIEVE PEIRCE, Plaintiffs, -vs- STATE OF INDIANA, et al, Defendants.) CIVIL ACTION NO. IP 76-7-C

NOTICE OF APPEAL

Notice is hereby given that Joshua Cazares, Joyce Cazares, Ray Z. Sullivan, William Pierce, and Genevieve Pierce, Plaintiffs in the above named cause, hereby Appeal to the United States District Court of Appeals for the 7th Circuit, from the Entry of Judgment for the Defendants entered in this action on the 27th day of January, 1976.

Respectfully submitted,

/s/ CHARLES S. GLEASON

/s/ DAVID A. GREENE

Attorneys for Plaintiffs (Appellants)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the Attorney General, 219 State House, Indianapolis, Indiana 46204, and upon Wood, Tuohy, Gleason & Mercer, 1930 Indiana National Bank Tower, Indianapolis, Indiana 46204, this 3rd day of February, 1976.

/s/ CHARLES S. GLEASON

Of Counsel
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Phone: 635-3345

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 76-1224

JOSHUA CAZARES, JOYCE CAZARES
ET AL,
Plaintiffs-Appellants,
-vs-
STATE OF INDIANA, ET AL,
Defendants-Appellees

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Joshua Cazares, Joyce Cazares, Kay L. Sullivan, William J. Pierce and Genevieve J. Pierce hereby appeal to the Supreme Court of the United States from the Order of the United States Court of Appeals for the Seventh Circuit entered August 17, 1976, affirming the Order of the United States District Court for the Southern District of Indiana, Indianapolis Division.

II. This appeal is taken pursuant to 28 U.S.C.A. 1254(2).

III. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme

Court of the United States, and include in said transcript all documents filed herein.

/s/ CHARLES S. GLEASON
Attorney for Plaintiffs

Of Counsel
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One Indiana Square
Indianapolis, Indiana 46204
Telephone: (317) 635-3345

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was served upon The Attorney General, 219 State House, Indianapolis, Indiana 46204, and upon Wood, Tuohy, Gleason & Mercer, 1930 Indiana National Bank Tower, One Indiana Square, Indianapolis, Indiana 46204, by placing the same in the United States First Class Mail, postage prepaid, this 12th day of November, 1976.

/s/ CHARLES S. GLEASON

INDIANA CONSTITUTION

ARTICLE 1, SECTION 12

Courts Open - Due Course of Law Administration of Justice.- All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-673

JOSHUA CAZARES, JOYCE CAZARES, KAY L. SULLIVAN, WILLIAM J. PIERCE and GENEVIEVE J. PIERCE,

Appellants

v.

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Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION TO DISMISS OR AFFIRM OR BRIEF IN OPPOSITION TO CERTIORARI

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TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

NO.

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Appellants

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Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION TO DISMISS OR AFFIRM OR BRIEF IN OPPOSITION TO CERTIORARI

The Appellees move the Court to dismiss the appeal herein since this Court has no jurisdiction to review the judgment of the United State Court of Appeals for the Seventh Circuit in this cause pursuant to 28 U.S.C. §1254 (2), in that the judgment did not hold a State statute to be invalid as repugnant to the Constitution or laws of the United States. If this Court determines that jurisdiction in this cause is conferred by the provisions of 28

U.S.C. § 1254(2), then the Appellees request this Court to affirm the judgment of the United States Court of Appeals for the Seventh Circuit on the ground that it is manifest that the question on which the decision of the cause depends is so inconsequential and of such little substance as not to need further argument. In the alternative if this Court finds 28 U.S.C. § 2103 applicable and treats this appeal and acts upon it as a petition for writ of certiorari, then the Appellees request this Court to consider their response as a Brief in Opposition to Petition for Writ of Ceritorari.

NATURE OF PROCEEDING

Plaintiffs commenced this lawsuit on January 6, 1976, alleging jurisdiction pursuant to the Civil Rights Act of 1964, 42 U.S.C. § 1981 *et seq.* and on 28 U.S.C. § 1343 *et seq.* requesting the United States District Court for the Southern District of Indiana, Indianapolis Division (hereafter District Court) to issue an injunction mandating appropriations by the General Assembly of Indiana for additional judges and facilities, the redistricting and reapportionment of the appellate courts, and the alleviation of the alleged backlog of pending appeals. In addition, the Plaintiffs sought One Hundred and Fifty Million Dollars ($150,000,000.00) in damages and Five Million Dollars ($5,000,000.00) in attorney fees. The District Court dismissed this cause on six grounds. (See Appellants' Jurisdictional Statement, A-5—A-7). On August 17, 1976, the United States Court of Appeals for the Seventh Circuit (hereafter Seventh Circuit) affirmed the judgment of the District Court because it presented a non-justiciable "political question" without finding it necessary to reach the other grounds upon which the District Court's judgment was rendered. (See Appellants' Jurisdictional Statement, A-3).

ARGUMENT

I.

JURISDICTION IN THIS CAUSE NOT CONFERRED BY 28 U.S.C. § 1254(2)

In the Appellants' Jurisdictional Statement the contention is made that jurisdiction is conferred in this cause by the provision of 28 U.S.C. § 1254(2) which permits an "appeal by a party relying on a State statute held by a Court of Appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States . . ." In that regard, Appellants state on page 4:

> In the course of their opinion the Court of appeals stated with regard to the matter of collecting damages for unreasonable delay in the decision of appellate matters that determining a general rule in civil cases is even more difficult because there is no constitutional right, as there is under the Sixth Amendment, to a speedy trial.
>
> *By so doing, the Court ignored the Indiana constitutional provision for a speedy trial cited in Appellants' Court of Appeals brief and apparently held it for naught.* As a result the people of Indiana are left with a situation in which the meaning of their constitutional provision is obscure in reference to the Fourteenth Amendment to the U.S. Constitution. (Emphasis supplied).

The Appellants only authority cited in support of their jurisdictional contention is the decision of this Court in *Watson v. Employers Liability Assurance Corp.* 348 U.S. 66 (1954). In *Watson, supra* this Court held that an appeal pursuant to 28 U.S.C. § 1254(2) was proper since the

United States Court of Appeals for the Fifth Circuit had *specifically* held Louisiana statutory provisions unconstitutional.

In the case at bar the Seventh Circuit affirmed the District Court's dismissal without holding an Indiana statutory or constitutional provision repugnant to the Federal Constitution. Specifically, the Seventh Circuit concluded that the allegations of the Complaint presented a non-justiciable "political question." (Appellants' Jurisdictional Statement, A-1—A-5).

As this Court stated in *Public Service Commission of Indiana et al., v. Batesville Telephone Co.,* 284 U.S. 6 (1929) at page 7:

> The plain intent of this statute [presently 28 U.S.C. § 1254(2)] is to limit appeals to this Court from a Circuit Court of Appeals to cases where its decision is against the validity of statute of a State upon the ground of its being repugnant to the Constitution, treaties, or laws of the United States. In other cases, review by this Court if it be had, must be pursuant to a writ of certiorari duly applied for and granted.

The term "state statute" as used in 28 U.S.C. § 1254(2) has been found by this Court to include state constitutional provisions. *City of Detroit v. Murray Corp.,* 355 U.S. 489 (1957).

Since the Seventh Circuit did not find a state statute repugnant to the Federal Constitution as prescribed by 28 U.S.C. § 1254(2), this appeal is improvidently taken and should be dismissed.

II.

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT

If this Court determines that the appeal should not be dismissed, the Appellees would request that the decision of the Seventh Circuit be affirmed in that the case presents no substantial question not previously decided by this Court.

The Seventh Circuit concluded that Count I of the Plaintiffs' Complaint, which sought an injunction declaring unconstitutional portions of the Indiana Constitution governing intermediate courts and mandating the restructuring of the state appellate court system, was properly dismissed as presenting a non-justiciable "political question." The decision of the Seventh Circuit in affirming the dismissal of Count I of the Complaint is consistent with the affirmance of dismissals by other Court of Appeals in causes similar to the one at bar. *Ad Hoc Committee on Judicial Administration v. Commonwealth of Massachusetts,* 488 F.2d 1241 (1st Cir. 1973) *cert. denied* 416 U.S. 986 (1974); *DeKosenko v. State of New York,* 427 F. 2d 351 (2d Cir. 1970).

Also, the Seventh Circuit concluded that Count II of the Complaint, which sought One Hundred and Fifty Million Dollars ($150,000,000.00) in damages, was properly dismissed because standards do not exist to enable the judiciary to determine when delay creates a cause of action for damages.

The decision of the Seventh Circuit is consistent with the rulings of this Court on the application of the political question doctrine. *Gilligan v. Morgan,* 413 U.S. 1 (1973);

Baker v. Carr, 369 U.S. 186 (1962). The political question doctrine is premised on the theory that a court should not consider disputes for which they lack special competence or judicially ascertainable standards. *Powell v. McCormack,* 395 U.S. 486 (1969). This Court has found that the federal courts should not interfere or supervise the financing and organization of state and local governments. See *O'Shea v. Littleton,* 414 U.S. 488 (1974).

It is clear from the above cases that if this Court finds jurisdiction for this appeal the Appellants herein present no substantial question not previously decided, and that the Seventh Circuit correctly affirmed the decision of the District Court.

III.

IF COURT APPLIES 28 U.S.C. § 2103 THEN CERTIORARI SHOULD BE DENIED

Although it is clear that this appeal is improvidently taken, the Appellees recognize that this Court may treat and act upon this appeal as a Petition for Writ of Certiorari pursuant to 28 U.S.C. § 2103. In section II. above, the Appellees presented the reasons why the Seventh Circuit's affirmance of the District Court's dismissal was proper. Those reasons also are applicable and establish the reasons why a writ of certiorari should be denied. Therefore, in order to avoid repetitious arguments, the Appellees request this Court to examine those sections as if fully set out and reiterated herein.

In addition, the Appellants have not pleaded or shown any conflict between the circuit courts on the issue involved herein, nor have they shown any conduct on the part of the lower courts which would require the exercise of this

Court's supervisory powers. Thus, this Court should deny a petition for a writ of certiorari in this cause.

CONCLUSION

For these reasons, the appeal herein should be dismissed. If this Court determines it has jurisdiction, then the decision of the Seventh Circuit should be affirmed. If this Court treats the Jurisdictional Statement as a Petition for Writ of Certiorari, then the petition should be denied.

Respectfully submitted,

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